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EXAMINER

JACKSON, ANDRE K

ART UNIT PAPER NUMBER

2856

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,610

Applicant(s)

HADALA, ANTHONY J.

Examiner

Andre' K. Jackson

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 8, 10, 11, 13-26 and 31-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

- 5) ☐ Claim(s) _____ is/are allowed.

- 6) ☒ Claim(s) 1-3, 6, 8, 10, 11, 13-26 and 31-33 is/are rejected.

- 7) ☐ Claim(s) _____ is/are objected to.

- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.

- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)

- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

- 5) ☐ Notice of Informal Patent Application (PTO-152)

- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Paron et al.

Regarding claim 25, Paron et al. disclose a flexible band temperature-measuring device capable of determining a 2°F temperature change in the range of about 34°F to about 94°F (Figure 1).

Regarding claim 26 Paron et al. disclose where the device measures temperatures in the range of about 34°F to about 80°F (Figure 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this

title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3,6,11,10,13,23,24,31 and 32 are rejected under 35 U.S.C.

103(a) as being unpatentable over Furuhashi et al. in view of Brown et al.

Regarding claim 1, Furuhashi et al. disclose a "Keg for draft beer" which has a container having an outlet for a first fluid and an inlet for a second fluid introducing carbon dioxide, a container having a first carbonated fluid region, a first carbonated fluid being present at an original level of the container, the container, for when in use, having a first carbonated fluid at least partially removed from while introducing carbon dioxide to the container forming a second carbonated fluid region (Column 2, Figure 3). What is not disclosed by Furuhashi et al. is placing on the container at least one temperature-measuring device, a temperature-measuring device being located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container. However, Brown et al. disclose a "Liquid crystal level indicator" which has

at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include at least one temperature-measuring being located in a region of the container where the second fluid region is formed by removal of the first fluid as taught by Brown et al. since when using opaque containers one would want to know the amount of liquid remaining in the container. Brown et al. teaches to initially observe the temperature and then observe another temperature in the second fluid region (Column 12, lines 54-55). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include initially observing the temperature and then observing another temperature in the second fluid region as taught by Brown et al. since one would want to know the amount of liquid remaining in the container. Correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container is well within the purview of the skilled artisan since that correlation would give the level of the liquid.

Regarding claims 2 and 3, neither Furuhashi et al. nor Brown et al. gives particular times at which the temperatures are observed. However, to observe the temperatures when the first fluid is at least partially withdrawn through the outlet and when the second fluid is introduced

through the inlet is well within the purview of the skilled artisan since the container can be observed every minute on the minute or hourly.

Regarding claim 6, Furuhashi et al. does not disclose a temperature-measuring device being adhered to the container. However, Brown et al. discloses where the temperature-measuring device is adhered to an outer surface of said container as a magnetic strip (Column 8, lines 29-30). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include where the temperature-measuring device is adhered to an outer surface of said container as a magnetic strip as taught by Brown et al. since some containers are made of metal where a magnet can be applied.

Regarding claim 10, Furuhashi et al. disclose where the container is in a refrigerator (Column 2).

Regarding claim 11, Furuhashi et al. disclose where the first fluid is a liquid (Column 2).

Regarding claim 13, Furuhashi et al. does not disclose the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F. However, Brown et al. disclose where the Prior art devices need the aid of water to activate the thermometer (Column 3, lines 55-58; lines 60-66 and Column 4, lines 26-29). Therefore, to modify Furuhashi et al. to include a water-moistened cloth where the temperature of the water moistened cloth

is less than 105°F would have been obvious to the skilled artisan as evidenced by Brown et al. since the Prior art devices need the aid of water to activate the thermometer. Brown et al. overcomes this deficiency of using water to activate the thermometer in his invention (See Column 7).

Regarding claim 23, Furuhashi et al. has a container having an outlet for a first fluid and an inlet for a second fluid introducing carbon dioxide, a container having a first carbonated fluid region, a first carbonated fluid being present at an original level of the container, the container, for when in use, having a first carbonated fluid at least partially removed from while introducing carbon dioxide to the container forming a second carbonated fluid region (Column 2). Furuhashi et al. does not disclose a temperature-measuring device measuring temperatures in the range of about 34°F to about 94°F. However, Brown et al. disclose a temperature-measuring device measuring temperatures in the range of about 34°F to about 94°F (Column 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a temperature-measuring device measuring temperatures in the range of about 34°F to about 94°F since this modification would give the user a knowledge of the temperature of the contents in the keg.

Regarding claim 24, Furuhashi et al. does not disclose a temperature-measuring device measuring temperatures in the range of

about 34°F to about 80°F. However, Brown et al. disclose a temperature-measuring device measuring temperatures in the range of about 34°F to about 80°F (Column 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a temperature-measuring device measuring temperatures in the range of about 34°F to about 80°F since this modification would give the user a knowledge of the temperature of the contents of the keg.

Regarding claim 31, Furuhashi et al. has a container having an outlet for a first fluid and an inlet for a second fluid (Figure 3). Furuhashi et al. and Brown et al. both have a container having a first fluid region, a first fluid being present at an original level of the container, the container, for when in use, having a first fluid at least partially removed from the container forming a second fluid region (Columns 2 and Column 3, lines 50-68 and Figures 1 and 2 respectively). What is not disclosed by Furuhashi et al. is placing on the container at least one temperature-measuring device, a temperature-measuring device being located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the

difference between the first temperature and the second temperature to the level of the first fluid in the container. However, Brown et al. has at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Furuhashi et al. to include at least one temperature-measuring being located in a region of the container where the second fluid region is formed by removal of the first fluid as taught by Brown et al. since when using opaque containers one would want to know the amount of liquid remaining in the container. Brown et al. teaches to initially observe the temperature and then observe another temperature in the second fluid region (Column 12, lines 54-55). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include initially observing the temperature and then observing another temperature in the second fluid region as taught by Brown et al. since one would want to know the amount of liquid remaining in the container. Correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container is well within the purview of the skilled artisan since that correlation would give the level of the liquid.

Regarding claim 32, Furuhashi et al. does not disclose the step of wiping the temperature-measuring device with a water-moistened cloth

where the temperature of the water moistened cloth is less than 105°F.

However, Brown et al. disclose where the Prior art devices need the aid of water to activate the thermometer (Column 3, lines 55-58; lines 60-66 and Column 4, lines 26-29). Therefore, to modify Furuhashi et al. to include a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F would have been obvious to the skilled artisan as evidenced by Brown et al. since the Prior art devices need the aid of water to activate the thermometer. Brown et al. overcomes this deficiency of using water to activate the thermometer in his invention (See Column 7).

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Brown et al. as applied to claim 1 above, and further in view of Hof et al.

Regarding claim 8, neither Furuhashi et al. nor Brown et al. discloses a eutectic measuring device. However, Hof et al. disclose a "Temperature indicating compositions of matter" which has a eutectic measuring device (Column 30, line 41). Therefore, the skilled artisan would have been inclined to modify Furuhashi et al. to include a eutectic measuring device as taught by Hof et al. since having a proper temperature range for the liquid is essential. Hof's et al. temperature device is a disposable temperature device.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Brown et al. as applied to claim 1 above, and further in view of Cannon.

Regarding claim 14, neither Furuhashi et al. nor Brown et al. disclose a keg having a pressure between 5 and 100 psi. However, Cannon discloses a "Bulk carbonated beverage container" which has a keg having a pressure between 5 and 100 psi (Column 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a keg having a pressure between 5 and 100 psi as taught by Cannon since this modification would ensure that the container is liquid tight capable of resisting damage from external forces. The temperature is not given by Cannon, but the reference does disclose that the keg is returnable and with that being true the keg would have to experience different temperature changes especially one being in the range of 70°F.

7. Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Regarding claim 15, Brown et al. disclose a temperature-measuring device mounted on a magnetic strip having a width, a height, and a thickness, provided further that the dimensionless ratio of said width to said height is about 0.5 to about 10 to about 1 to about 5 (Figure 1). Since the ratio is dimensionless, the Examiner is assuming his own dimensions

when reading this claim. Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 16, Brown et al. disclose where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 17, Brown et al. disclose where the device measures temperatures in the range of about 34 °F about 94°F (Column 12, lines 19-37).

Regarding claim 18, Brown et al. disclose where the device measures temperatures in the range of about 34 °F to about 86°F (Column 12, lines 19-37).

Regarding claim 19, Brown et al. disclose where temperature-measuring device can be mounted on an adhesive strip the temperature-measuring device having a width, a height, and a thickness, provided further that the dimensionless ratio of said width to said height is from about 0.5 to about 10 to about 1 to about 5 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 20, Brown et al. disclose where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 21, Brown et al. disclose where temperature-measuring device measures temperatures in the range of about 34°F to about 94°F (Column 12, lines 19-37).

Regarding claim 22, Brown et al. disclose where the temperature-measuring device measures temperatures in the range of about 34°F to about 86°F.

8. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Brown et al. as applied to claim 1 above, and further in view of Cannon.

Regarding claim 33, neither Furuhashi et al. nor Brown et al. disclose a keg having a pressure between 5 and 100 psi. However, Cannon discloses a "Bulk carbonated beverage container" which has a keg having a pressure between 5 and 100 psi (Column 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a keg having a pressure between 5 and 100 psi as taught by Cannon since this modification would ensure that the container is liquid tight capable of resisting damage from

external forces. The temperature is not given by Cannon, but the reference does disclose that the keg is returnable and with that being true the keg would have to experience different temperature changes especially one being in the range of 70°F.

Response to Arguments

9. Applicant's arguments with respect to claims 1-3,6,8,10,11 and 13-26 have been considered but are moot in view of the new ground(s) of rejection.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

A.J.C.
May 22, 2003

HELEN KWOK
PRIMARY EXAMINER
Helen Kwok